IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CONTEMPT PETITION NO.32 OF 2001

IN

SUIT NO.3568 OF 1999

...

Smt.Krishnabai Gokaldas Asher ...Petitioner

v/s.

M/s.Sonal Builders &
Contractors & Anr. ...Respondents

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Mr.P.J. Thorat i/b Ms.V.V.Thorat for the Petitioner.
Mr.Vishal Seth i/b Mahimtura & Co. for the Respondents.

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**CORAM: D.K.DESHMUKH, J.**

**DATED:** 10TH JANUARY,2007

**P.C.:**

1. Admitted position is that there is a consent decree passed by the Court. Because of that decree the Respondent was to give two flats to the Petitioner and if the Respondent was not in a position to give two flats then he was to pay an amount of Rs.39 lakh and that was to be done by particular time.

2. The Respondent did not comply with his obligation under the consent decree. Therefore, this contempt petition has been filed. It is also an admitted position that during the pendency of this petition, the Respondent has paid an amount of Rs.39 lakh. It is also an admitted position that interest which according to the Petitioner the Respondent is liable to pay on the amount of Rs.39 lakh as per the consent decree has not been paid by the Respondent to the Petitioner.

3. The learned Counsel appearing for the Petitioner relying on the judgment of the Supreme Court in the

case of **Bank of Baroda v/s. Sadruddin Hasan Daya and anr., (2004) 1 SCC 360** submits that for non-payment of interest on the amount of Rs.39 lakh which admittedly paid by the Respondent to the Petitioner, this court should entertain this contempt petition and punish the Respondent.

4. This contempt petition has been lodged by the Petitioner without making any attempt to execute the decree, though, admittedly the consent decree passed in favour of the Petitioner is executable. It is true that only because a decree is executable, the court does not cease to have a jurisdiction to entertain the contempt petition for disobedience of either the undertaking given in the consent decree or the order that is made by the court. But when the decree is capable of being executed, in stead of taking up execution proceedings contempt petition is filed. It is a circumstance to be taken into consideration by the court while deciding the contempt petition. In the case of Bank of Baroda (referred to above), no doubt the Supreme Court has said that the fact that the decree is executable is no ground not to entertain the contempt petition. But we have to see in what background those

observations have been made by the Supreme Court. In the case before the Supreme Court, the Bank of Baroda which was the Petitioner had put the decree to execution and when that decree was put to execution it was found that contrary to the decree that was passed in favour of Bank of Baroda, in a consent decree between the Respondent in that case and the Bank of Oman breach of undertaking was committed. Obviously, therefore, this question could not have been solved or remedied in the execution proceedings that was filed by the Bank of Baroda, and therefore, the Supreme Court entertained the contempt petition. So far as the present case is concerned, the decree is executable, the decree has admittedly been substantially complied with, the Respondent is present in court and he has expressed his apology.

5. In these circumstances, therefore, in my opinion, it will not be appropriate to punish the Respondent for not carrying out his obligation under the consent decree. In my opinion, an order imposing costs of this petition on the Respondent would meet the ends of justice. The Petition is disposed of. The Respondent is directed to pay as and by way of costs

of this petition Rs.5000/- to the Petitioner. It is clarified that the Petitioner is at liberty to put the consent decree to execution.

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